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Letter dated 11 July 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Namibia to the United Nations addressed to the Secretary-General

I have the honour to transmit to you a memorandum by the Frente POLISARIO on the question of Western Sahara (see annex), and I should be grateful if you would have it circulated as a document of the Security Council as a matter of urgency.

(*Signed*) Gerhard **Theron**
Chargé d'affaires a.i.

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Annex to the letter dated 11 July 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Namibia to the United Nations addressed to the Secretary-General

Memorandum of the Frente POLISARIO on the question of Western Sahara

Introduction

The question of Western Sahara is one of the most sensitive, if not the most sensitive, on the current agenda of the United Nations Security Council. It bears with it a triple dimension. First, it involves the right of self-determination, as a fundamental principle enshrined in the United Nations Charter. Second, as long as the conflict remains unresolved, the regional stability will continue to be at great risk. Third, the success or failure of the United Nations will enhance or compromise the credibility of the current international system. Just one of these single dimensions is of enough political weight for the Security Council to seriously engage in finding a last and just solution to the Western Sahara issue.

History proves that any solution that is against or ignores the right of self-determination cannot be a lasting one. This basic lesson, which has been tragically challenged by powerful and less powerful regimes, has always demonstrated its universal value and truth. The recent independence of East Timor constitutes a fresh confirmation of that assessment as well as the struggle engaged by the African peoples for freedom, which earned the recognition as a fight for the principle of self-determination, a key pillar of the international system represented by the United Nations.

From this perspective, Western Sahara case is not a new problem of a new nature. It is a plain, simple case of decolonization whose solution cannot be a new challenge to the historical old lesson. If Morocco made a clear mistake; the International Community should not do the same.

The promised referendum

Western Sahara was included in the UN list of the Non-Self-Governing territories in 1963 and the UN General Assembly had adopted in 1966 its first resolution requesting Spain, as administering power, to make the necessary arrangements for the organization of a referendum on self-determination for the people of Western Sahara.

In 1967 the first Sahrawi independence movement was founded to peacefully seek the independence of the territory. On June 17, 1970, the Sahrawi organized a peaceful demonstration, which was brutally repressed by the Spanish military forces. Three years later, on May 10, 1973, the Frente Polisario was created and the struggle for the liberation and independence of Western Sahara began.

Not until 1974 did Spain indicate its readiness to implement the UN resolutions, but soon Morocco and Mauritania claimed sovereignty over the Territory. The UN General Assembly asked for the opinion of the International Court of Justice ICJ).

The ICJ issued its verdict on October 16, 1975:

"The materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."

The invasion

Despite the ICJ opinion, Morocco and Mauritania immediately moved to illegally occupy Western Sahara. With Moroccan government coercion and financial incentives around 300,000 Moroccans were organized, under protection of the Moroccan Armed Forces, to participate in the so-called "Green March" to invade and settle Western Sahara. The UN Security Council adopted resolution 375 (in 1975) by which it requested the immediate withdrawal of the Green March" from the territory. It was an empty request, for over twenty-five years has passed, and Morocco is still illegally occupying Western Sahara.

In November 14, 1975, under a covert treaty now known as the "Madrid Accords", the Spanish authorities partitioned "Spanish Sahara" between Morocco and Mauritania. To justify their military invasion and partition of the territory, the new invaders tried to present the Madrid Accords as a legal title that overrode the United Nation's resolutions and the principle of self-determination enshrined in the UN Charter.

However, as the UN Under-Secretary of Legal Affairs stated recently:

"The Madrid Agreement did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering Power - a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the territory to Morocco and Mauritania in 1975, did not affect the international status of Western Sahara as Non-Self-Governing Territory." (Letter to the President of the Security Council on 29 January 2002)

The invasion of Western Sahara led to a mass exodus of the Sahrawi civilian population over the eastern border of the Territory to escape Moroccan air strikes. These indiscriminate bombardments of the civilian population involved the use of both Napalm and cluster bombs. More than 160.000 Sahrawi refugees settled in tented camps close to the border, near the Algerian town of Tindouf where they have been living in dire conditions for the past 27 years.

In 1979 Mauritania signed a formal treaty with Polisario agreeing to withdraw all territorial claims to Western Sahara and formally recognized the Sahrawi Arab Democratic Republic (SADR) as the legitimate sovereign authority of Western Sahara.

Moroccan forces immediately moved to occupy the territory vacated by Mauritanian forces. That fait accompli was vigorously condemned by the UNGA resolutions 3437(1979) and 3518(1980). A protracted military struggle took place that involved

Morocco's brutal repression of the civilian Sahrawi population remaining in the occupied territory, which was well documented by the international humanitarian organizations including Amnesty International, Human Rights Watch, and Federation International des Droits de l'Home.

In the early 1980's Morocco, unable to militarily win the war, undertook the construction of a 2,200 km defensive wall (berm) to protect its demoralized forces and to enclose the occupied territory with a view of initiating the exploitation of the Territory's mineral resources. This rock/sand installation stands approximately 3 meters high with regularly spaced garrisons, with the foreground covered with trenches and barbed wire and extensively defended with an estimated 3 million landmines. The new strategy was financially burdensome but not militarily effective against the Sahrawi forces.

The UN-OAU Settlement Plan

In 1985, the UN General Assembly adopted unanimously resolution 40/50 based on a draft, which was introduced by the President of Senegal, chairman of the Organization of the African Unity, (OAU) on behalf of the African States. Resolution 40/50 mandates the Secretary General to start discussions with Morocco and the Polisario Front with the aim to obtain their cooperation for the implementation of the resolution.

The UNGA resolution, which reflects the entire operative paragraphs of the resolution 104(XIX) adopted in Addis Ababa by the OAU summit, requested the two parties to start (a) direct negotiations to reach (b) a cease-fire, and (c) to agree on the modalities of a free and fair referendum on self-determination for the people of Western Sahara. The OAU resolution was not implemented due to Morocco's obstruction; however, it remained as a fundamental reference for any future engagement of the United Nations to peacefully resolve the conflict.

As a result, the UN and the OAU elaborated, in the summer of 1988, a settlement plan, which was agreed by both parties. The UN Security Council adopted the Settlement Plan in resolutions 658 (690) and 690 (1991), by which it mandated the establishment of the UN Mission for a Referendum on the Western Sahara (MINURSO). This eventually led to (a) the deployment of MINURSO; (b) the declaration of a cease-fire and(c) the beginning of the identification of eligible voters based upon the last Spanish census organized in the territory in 1974, with the aim of holding a referendum on February 1991 to determine the wishes of the Sahrawi people.

The Houston Accords

The facts have demonstrated that Morocco's acceptance of the Settlement Plan was rather a tactical move for achieving two main objectives of a hidden agenda.

On the one hand, it wanted a cease-fire, as a solution to the huge financial cost of the war. On the other hand, in December 1991, Morocco imposed upon the UN a substantial modification of the clauses concerning the electorate with a view to legitimizing an

electoral fraud. In fact, Morocco attempted to add approximately 250,000 names to the voter list. Such a move led to the delay of the promised referendum for several years.

In September 1997, under the auspices of former US Secretary of State, James Baker III, Personnel Envoy of the UN Secretary General, the two parties signed the Houston Agreements, which constituted a major breakthrough of the impasse that enabled the Secretary general to inform the Security Council in his report S/1997/742 of November 1997:

> *"With these agreements, and the goodwill and spirit of cooperation shown during the talks, the main contentious issues that had impeded the implementation of the plan have thus been satisfactorily addressed. These achievements create the conditions to proceed towards the full implementation of the settlement plan, starting with the resumption of the identification process." (Paragraphs. 26 & 27)*

MINURSO finally accomplished the identification process and published in February 2000, the lists of those eligible to vote in the referendum. This important progress, achieved by the UN at the cost of six years of efforts and more than 500 million US Dollars, resolved the principal problem that had been stalling the Peace Process. All that was needed was to apply the remaining stages of the Settlement Plan and to organize the referendum.

Obstruction and disengagement of Morocco

Once again the Moroccan regime looked for ways to obstruct the process. It introduced 130,000 fake appeals on behalf of Moroccans who were already rejected by the UN Identification Commission to challenge the list of voters published by MINURSO.

The United Nations could have overcome that obstacle had the Security Council exerted its full authority to assure Moroccan cooperation with MINURSO, bearing in mind that the question of the appeals is a technical problem that can be resolved through the implementation of the UN Protocols and Directives governing the appeals, which were accepted by the two parties in May 1999.

Unfortunately, the Security Council did not use that authority thus allowing Morocco to continue its obstruction to the Settlement Plan and the referendum process with a view to replace it by an "alternative" formula. Indeed, Morocco declared openly, at the Berlin meeting of September 2000, that it was no longer prepared to cooperate with the UN in its efforts to organize the referendum. Mr. Baker and Mr. Annan, as stated in paragraph 48 of UNSG recent report of February 2002, have recognized that "Morocco was unwilling to go forward with the Settlement Plan". This recognition proves that Morocco has been misleading the International Community for ten years since it first accepted the settlement Plan in 1990-91.

It is well known that Morocco wants now to "discuss" only a solution that would guarantee the integration of Western Sahara into Morocco.

The "Draft Framework Agreement"

Between February 2000, the date of the accomplishment of the identification process and May 5, 2001, the day when the *Draft Framework Agreement* (DFA) was first presented to the Polisario Front, the Secretary General's reports suddenly started giving a bleak picture of the situation and stressing growing difficulties for the implementation of the Settlement Plan.

As a result of Morocco's attempts to block the referendum, Personal Envoy, James Baker III, explored other possible mechanisms to resolve the conflict. This has led to a gradual shift to what later was called the "Draft Framework Agreement", included in the UN Secretary General Report S/2001/613 of 20 June 2001.

Beyond its confusing label, the so-called "Draft Framework Agreement" is in fact a planned integration of the Territory into Morocco through a fake referendum. It is based on two main elements:

a) A transitional period of 5 years during which the Territory will remain under Moroccan sovereignty while different electoral bodies, including the Moroccan population residing in the Territory, will elect an Executive and Legislative council.

b) At the end of that period of time, "a referendum will decide the future of the Territory in which to be qualified to vote, a voter must have been a full time resident of Western Sahara for the preceding one year" (paragraph 5 of DFA). This provision will allow an electoral body made up by Moroccan settlers, different from the one already identified by the United Nations, to take part in a decisive referendum on self- determination that should be granted only to the people of Western Sahara.

It has been indicated that the Governments of two permanent members of the Security Council, have agreed to consider themselves, if be needed, as "guarantors of the performance of the agreement."

The Draft Framework Agreement's inconsistency

The DFA is an obvious attempt to satisfy Morocco's aspirations and legitimize its illegal occupation of Western Sahara. If the real motivations behind this radical change vis-à-vis the UN Settlement Plan are still unknown, it is, however, evident that the legitimacy and legality of the new formula go against the UN resolutions on Western Sahara and the verdict of the International Court of Justice which have stressed that Morocco has no legitimate claims over Western Sahara.

In this connection, a close consideration of the arguments and of the substance will show the inconsistency of the DFA.

A) On the one hand, three main "arguments" were used as a bridge to try to abandon the Settlement Plan as a step to introduce the DFA.

First: Processing 130,000 appeals lodged by Morocco will require at least 2 years, and, thus, the referendum could not be organized before 2002.

However, the DFA foresees a" referendum" in 5 years. It therefore seems inconsistent to be "impatient" with 2 years while showing "leniency" with 5 years, which is a longer period of time.

Furthermore, had MINURSO been instructed to initiate the appeals process in February 2000 it would have already accomplished this task and the referendum would have been held.

Second: The absence in the Settlement Plan of "enforcement mechanisms" would allow the parties not to respect the results of the referendum.

This argument seems to refer to Morocco since the Polisario Front has always stressed that it will abide by the results of a free and fair referendum organized by the United Nations in conformity with the Settlement Plan. It is hard to believe that Morocco could challenge with impunity the results of a referendum it voluntarily accepted. Even so, the Security Council can take at an appropriate time all necessary measures, in conformity with the UN Charter, to make sure that the parties will respect the results of a referendum organized under its authority.

Putting forward the argument of absence of "enforcement mechanisms" as a major and insoluble problem in the way of the referendum, before the referendum even takes place, is tantamount to undermining the authority of both the Security Council and the Secretary General, and it encourages Morocco to continue obstructing the peace process.

Furthermore, as indicated above, two major powers, permanent members of the Council were ready to "guarantee" the implementation of the Draft Framework Agreement. In our point of view, it will be more understandable and easier to be ready to "guarantee" the results of a referendum endorsed by the UN Security Council in conformity with the settlement Plan and the Houston Accords, which were negotiated by the two parties under the auspices of a former US Secretary of State.

Third: The referendum on self-determination envisaged in the settlement Plan is a "winner-takes-all" solution.
The third argument means the replacement of the right of self-determination, cornerstone of the United Nations doctrine regarding the decolonization and the very substance of the Settlement Plan, by a mercantile approach (winners and losers) to judge the worthiness and the merit of the referendum on self-determination.

In fact, there is only a winner: the people of Western Sahara whose right to self-determination must be respected. The two parties, Polisario Front and Morocco, have voluntarily accepted the Settlement Plan and the referendum formula, which contains

two options, independence of the Territory or its integration into Morocco. It seems bizarre and incongruous after 10 years of efforts aimed at moving forward the referendum process to invoke now the so-called "loser-winner' approach, which is by nature inherent to any free and fair referendum or elections, to try to justify the abandonment of the Settlement Plan.

The lack of coherence of the third argument does not need to be proven since the DFA itself will allow Morocco, an illegal occupying power, to "take all", to integrate all Western Sahara as a Moroccan territory at the end of a 5 year period through a fake referendum.

Morocco and those who advocate the merits of the DFA do not hesitate to allege that it "provides for self-determination". They argue that the final status of Western Sahara will be submitted to a "referendum". However, why be in favor of a" referendum" in the context of the DFA and at the same time be against the referendum in the framework of the Settlement Plan, which is the unique agreement between the parties and the unique solution endorsed by the Security Council and the International Community.

Against this background, the arguments used to justify the abandonment of the Settlement Plan, so as to introduce a thinly veiled formula of Morocco's integration plan, cannot withstand a close examination. Unfortunately, in the process, the UN resolutions, the MINURSO achievements such as the cease-fire, the identification of voters, the pre-registration of refugees, and the Proposals made on May 2001 by the Polisario aimed at facilitating the resumption of the referendum were deliberately minimized as well as the great value of the Houston Agreements.

B) On the other hand, the Polisario Front cannot accept the DFA as an alternative to the Settlement Plan since it is based on an evident denial of the right of self-determination of the people of Western Sahara, and legitimizes the occupation of Western Sahara by Morocco.

In this connection, it is worthy to remember that the purpose of the DFA, as formulated in the paragraph 30 of the Secretary General report S/2000/1029 of October 25, 2000, was to request the Government of Morocco, as "administrative power" (sic) to offer or support some devolution of governmental authority, for all inhabitants (settlers included) and former inhabitants of the territory, that is genuine, substantial and keeping with international norms".

It should be recalled that the International Court of Justice (opinion of October 14,1975) as well as United Nations Legal Department, (opinion of January 29, 2002), did not recognize Morocco's sovereignty over Western Sahara nor even the status of an administering power. However, the DFA approach considers (1) Western Sahara as a "Moroccan" Territory; (2) its inhabitants, the Sahrawi people and the settlers, as Moroccan" citizens; and (3) the right of self-determination and independence is being replaced by "some devolution of governmental authority" offered by what is de facto an occupying power.

As a result, the Security Council resolution 1359 of June 2001 did not endorse either the DFA or the Secretary General's report, which contained such a controversial formula. Even so, the Draft was discussed at the Wyoming meeting of August 2001.The Polisario Front reiterated its rejection to the Draft, as did Algeria, while Mauritania made it clear that it will support only a solution acceptable to the two parties. Morocco did not come to Wyoming, given the fact that the DFA was presumably elaborated in close coordination with it as can be deduced from the interview of King Mohamed VI to the French newspaper, *Le Figaro*, of September 4, 2001.

Taking into account what has been said above, the Draft Framework Agreement can be neither an "agreement" nor a "framework" to resolve the conflict of Western Sahara. Its "*capital sin*" lies in the fact that, on the one hand, it aims at replacing the unique agreed legal basis (the settlement Plan) by a unilateral approach that fits the occupying power desires. On the other, it allows a Moroccan population instead of the people of the Territory to decide, in a "fake referendum" to be held at the end of 5 years of transitional period, the final legal status of Western Sahara.

The advocates of the DFA have been stressing that some "amendments and improvements" within the transitional period may be possible. However, this is an irrelevant question given the fact that the problem is not related with some "flaws" on the technicalities of the transitional period foreseen in the DFA but with the very premises of the DFA itself, which ignores the very nature of the conflict of Western Sahara às a question of decolonization that must be resolved on the basis of the right to self-determination. The sole people legitimated by the international legality to decide the future of the territory is the Sahrawi people represented by the electoral body already identified by the United Nations. As a consequence, the Settlement Plan is still the best, credible and viable way to go forward in the direction of a lasting and just solution to the last colonial case in Africa.

Recent Developments

On February 19 of this year, the Secretary-General of the United Nations issued a report concerning the situation in Western Sahara. This report restated the past ten years of negotiations and concluded that there were four options available to the Security Council to consider and adopt one of them with a view to enforcing its implementation without seeking the concurrence of both parties. The four options were:

1) Implementation of the Settlement Plan (the Referendum Process) which is the unique solution accepted by the two parties and endorsed by the Security Council.

2) Implementation of the Draft Framework Agreement (the integration of Western Sahara as a Moroccan territory), after making adjustments to it.

3) Partition of the Territory between the two parties.

4) To proclaim the failure of United Nations and to decide withdrawal of the UN mission from Western Sahara.

The Secretary General recommended extending the UN Mission's mandate until April 20, 2002 in order for the Security Council to decide on a way forward.

During the SC consultations of February 27, 2002, Mr. Baker stated to the members of the Council that an independent Sahrawi state would be viable and would contribute to the creation of stability in the Maghreb.

The Security Council extended the mandate of the UN Mission and started in early March 2002 consultations with the parties and Security Council experts about the options proposed by the UN Secretary General and his Special Envoy Mr. James Baker III.

Morocco rejected all the options except the second one, the DFA. The Polisario Front, while stressing that the Settlement Plan remains as the unique solution accepted by the two parties and endorsed by the UN Security Council, expressed its readiness to continue its cooperation with the UN Secretary General and his Personal Envoy efforts as long as they are aimed at ensuring a just and lasting solution to the conflict and, therefore, they take into account the legitimate national rights of the Sahrawi people.

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On April 26, 2002, a permanent member of the Council had, against all odds, circulated a draft proposal based on option 2.
On April 30, 2002, the Security Council of the United Nations met to consider its position with regard to the report from the Secretary-General and the proposed alternatives to resolve the conflict. The Security Council chose not to make a hasty decision that would not lead to a lasting and just resolution of the conflict and instead opted to extend the mandate of the UN Mission (MINURSO) until July 31, 2002 to give further time for the consideration of the options presented. The Polisario Front highly appreciated that the Security Council took such a wise decision, which will certainly give a greater chance for peace.

Conclusion

The decolonization of the Western Sahara has been on the UN agenda since the 1960s and remains as a case in which the credibility of the UN and its decolonization efforts are at stake.

Morocco, for domestic reasons, invaded in 1975 Western Sahara and it is still using the conflict as a tool to deflect the internal opinion from social and economic problems. It has been illegally occupying the Territory for more than 27 years during which it engaged in a systematic violation of human rights in the occupied zones while offering the resources of the territory to foreign companies with a view to take advantage of its illegal occupation through exploitation.

The annexation by force of a territory must not be rewarded. It is quite disturbing to see attempts being made to use the UN, which is meant to be an instrument of peace and justice and has always been on the side of the colonized peoples, as an instrument to legitimize occupation and in the process violate one of its sacred principles: the right to self-determination.

It is also an irony that, while the UN handed over a fully independent East Timor to its people, there are attempts to adopt a totally different approach to an identical situation in Western Sahara.

The Sahrawi people must exercise in a fair, free and democratic manner their right to self-determination. Any other solution against this fundamental right will only lead to more instability and conflict in the region and will not contribute to the credibility of the UN.

June 2002